

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHARLES DAVIS, SR.,

Plaintiff,

V.

PAUL SPAUR, and CHUCK SIMS,

Defendants.

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Civil No. **02-592-CJP**

ORDER

PROUD, Magistrate Judge:

In the final pretrial order drafted by the parties plaintiff asserts a claim that defendant Sims and unspecified others conspired to cover up the alleged use of excessive force by filing a false report. **(Doc. 17)**. Defendant Sims does not perceive such an issue in the case.

The complaint states in pertinent part: “Clinton County officer’s conspired together to cover the incident concerning plaintiff being physically dragged across the floor, by filing a false report in the matter” [sic]. **(Doc. 1, p. 4, ¶ 3)**. The Court’s threshold order did not construe the complaint as asserting any conspiracy claim. **(Doc. 5)**. Consequently, the Court and the defendant have proceeded through the discovery process under the assumption there was a single Eighth Amendment excessive force claim.

. The Court recognizes that plaintiff is proceeding pro se, and that the liberal federal notice pleading controls, but the complaint fails to state a viable constitutional claim relative to the alleged “cover-up.” Plaintiff has not specifically identified the officers involved, nor has he identified or suggested the constitutional or state law basis for such a claim. The Court cannot fashion a claim out of whole cloth. If defendant Sims attempts to introduce the alleged

conspiracy and false report at trial, plaintiff will be free to attempt to attack the evidence and witnesses to the extent permissible under the Federal Rules of Evidence, but no independent constitutional or state law claim regarding a conspiracy or false report will be litigated at trial.

IT IS THEREFORE ORDERED that the assertion that there is a pending claim regarding a conspiracy and/or false report contained in the final pretrial order (**Doc. 17**) is **STRICKEN**.

IT IS SO ORDERED.

DATED: September 1, 2005

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE